



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/128,721	08/04/1998	TODD ROBERT CARROLL	11632N.020880	3309

32885 7590 08/01/2003

STITES & HARBISON PLLC
424 CHURCH STREET
SUITE 1800
NASHVILLE, TN 37219-2376

EXAMINER

GUARRIELLO, JOHN J

ART UNIT PAPER NUMBER

1771

DATE MAILED: 08/01/2003

29

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

69/128721

Applicant(s)

Carroll

Examiner

John Guaricello

Group Art Unit

1721

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 5/8/2003
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 111; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-31, 33, 34, 43-50 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-31, 33, 34, 43-50 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Art Unit: 1771

DETAILED ACTION

15. The Examiner acknowledges paper # 28, the extension of time and the amendment of 5/8/2003.

16. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

17. Claims 1-31, 33, 34, 43-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, it is still not clear what the components of the specific coating composition comprises which meet the characteristics of puncture resistance and flex crack resistance as stated in the claim. Claims merely setting forth physical characteristics desired in an article, and not setting forth specific compositions which would meet such characteristics, are invalid as vague, indefinite, and functional, since they cover any conceivable combination of ingredients either presently existing, or which might be

Art Unit: 1771

discovered in the future and which would impart the desired characteristics, see Ex parte SLOB (Bd Pat App&Int) 157 USPQ 172. The phrase thermoplastic polyolefin elastomer relates only to one component and is itself generic in nature. The elements of the claim are insufficient to inform those practicing in the Art what the real scope of the claim is without undue experimentation.

In claim 4, line 2, it is not clear what the phrase “thermoplastic polyolefin coating” refers since this appears to be a lack of clear antecedent basis to claim 1 especially since the above phrase is not in claim 1.

In claim 5, line 2, it is not clear what the phrase “thermoplastic polyolefin coating” refers for the same reason given in claim 4.

In claim 6, line 2, it is not clear what the phrase “thermoplastic polyolefin in the form of a free film” refers since this is a clear lack of antecedent basis to claim 1.

In claim 12, line 2, it is not clear what the phrase “thermoplastic polyolefin film” refers since this is lack of clear antecedent basis to claim 1.

Art Unit: 1771

In claim 13, line 4, it is not clear for the same reasons given for claim 1.

In claim 20, lines 1 and 2, it is not clear what the phrase “thermoplastic olefin coating” refers since this is clear lack of antecedent basis to claim 19.

In claim 21, lines 1 and 2, it is not clear what the phrase “thermoplastic olefin coating” refers since this is a clear lack of antecedent basis to claim 19.

In claim 22, lines 1 and 2, it is not clear what the phrase “thermoplastic olefin is in the form of a free film” refers since this is a clear lack of antecedent basis to claim 13.

In claim 23, lines 3 and 4, it is not clear what the phrase “thermoplastic olefin resin” refers since this is a clear lack of proper antecedent basis to claim 13.

In claim 24, line 3, it is not clear what the phrase “thermoplastic olefin resin “ refers since this is a clear lack of proper antecedent basis to claim 13.

In claim 30, line 4, it is not clear for the same reasons given for claim 1.

Art Unit: 1771

In claim 33, lines 1 and 2, it is not clear what the phrase “thermoplastic polyolefin resin” refers since this is a clear lack of proper antecedent basis to claim 30.

In claim 45, line 4, it is not clear for the same reasons given for claim 1.

In claim 49, line 1 “TPO” is not clear because this is a lack of proper antecedent basis to claim 45, especially since the claim states no “TPO”.

Applicant’s arguments regarding breadth and functionality have been considered but they are not persuasive, see the cite to Ex parte SLOB. Moreover, there is no structure or chemistry to meet the properties or characteristics which applicant desires, thus claims are indefinite. The claims appear to be trying to exclude others from achieving the goals applicant has determined to be useful instead of defining applicant’s contribution to the art, i.e., the mean by which the goals are achieved.

Claim Rejections - 35 USC § 103

Art Unit: 1771

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claims 1-31, 33, 34, 43-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langley 5,948,708 in view of Stover 5,208,098.

Langley describes a multilayer composite which is a chemical barrier fabric, (see abstract). Langley describes a chemical barrier fabric with multilayers with multiple substrates to minimize permeability, (column 2, lines 51-59). Langley describes layers which can be HDPE, high density polyethylene, polyethylene, among others, which can be considered a TPO, thermoplastic polyolefin, which is the genus that includes thermoplastic polyolefin elastomers, (column 3, lines 8-59). Langley describes that other materials or layers can be substituted or added as desired, corresponding to polypropylene, (column 4, lines 4-13). Langley describes tensile strength of the suit which is a chemical barrier protection garment, (column 5, lines 1-20). Langley

Art Unit: 1771

differs from the claimed invention because it is not specific to thermoplastic polyolefin elastomers.

Stover describes composites which can be at least a three layer nonwoven web bonded to a polymeric porous film, (column 1, lines 5-11). Stover describes multilayer nonwoven web composites which can be used for chemical protection in general and for medical purposes which fabric corresponds to the claimed invention, (column 3, lines 20-33). Stover describes mixtures or blends of thermoplastic resins which can be thermoplastic elastomers of which the thermoplastic resins can be polyolefins, corresponding to polypropylene among others, (column 11, lines 28-35).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the thermoplastic polyolefin elastomers of Stover for the thermoplastic polyolefins of Langley motivated with the expectation that there would be an improvement in general protection and chemical protection as noted in Stover, (column 16, lines 55-60). It would have been obvious to one of ordinary skill in the art to optimize the thickness

Art Unit: 1771

of the olefin coating since this would be routine in this art to provide chemical protection by means of the appropriate number of layers since the prior art of record describes multilayer chemical barrier protection garments and materials.

20. Rejections not maintained are withdrawn because of the new grounds of rejection. Applicant's arguments were considered but are not considered germane with the new grounds of rejection.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

Art Unit: 1771


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


John J. Guarriello:gj

Patent Examiner

July 17, 2003

July 28, 2003


TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700